114-57

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1884.

No. 1246.

N. D. PUTNAM AND HENRY EARLE, PLAINTIFFS IN ERROR,

vs.

GEORGE E. INGRAHAM.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED DECEMBER 17, 1884.

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INDEX.

	Original.	Print.
Petition for writ of error	1	1
Bond	3	1
Writ of error	5	2
Citation	7	2
Proof of service of citation	8	3
Return to writ of error	9	3
Transcript from superior court of Hartford county	10	3
Writ of attachment	11	3
Sheriff's return	14	4
Bill of particulars	16	5
Answer	24	11
Amendment to answer	27	12
Articles of agreement between Putnam, Earle & Co., Jan. 2, 1884	28	12
Replication	34	14
Petition for removal	35	14
Bond for removal	37	15
Clerk's certificate	39	16
Motion to remand	40	16
Order to remand	41	16
Bill of exceptions	42	17
Assignment of errors	53	21
Clerk's certificate	56	22

JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 *Petition for Writ of Error.*

Circuit Court of the United States, District of Connecticut.

GEORGE E. INGRAHAM *v.* PUTNAM, EARLE & CO.

To the honorable the judges of the circuit court of the United States for the second circuit and district of Connecticut:

The petition of Nathaniel D. Putnam and Henry Earle, both of the city of Brooklyn, county of Kings, and State of New York, two of the defendants in the above-entitled cause, respectfully represents that they are aggrieved by the final judgment rendered against them in the said action upon the docket of this court, and are informed that there is error therein to their prejudice, and they are desirous that a writ of error be allowed them to the Supreme Court of the United States.

Wherefore they pray that a writ of error be allowed them, returnable to the present term of the Supreme Court of the United States not more than thirty days after date, in accordance with the
2 rule of said Supreme Court relating to writs of error and appeals under section 5 of the act of March 3rd, 1875, and that said writ of error may operate as a supersedeas.

NATHANIEL D. PUTNAM,
HENRY EARLE,
By their attorney, LEWIS E. STANTON.

3 Circuit Court of the United States for the District of Connecticut.

GEORGE E. INGRAHAM *v.* PUTNAM, EARLE & CO.

Know all men by these presents, that I, Lewis E. Stanton, of Hartford, in said State and district, am holden and firmly bound unto George E. Ingraham, of Enfield, in State and district, in the sum of two hundred dollars, to be paid to him, his heirs, executors, administrators, and assigns; to which payment, well and truly to be made, I do bind myself, my heirs, executors, and administrators by these presents.

The condition of this obligation is such, that whereas at a circuit court of the United States, second judicial circuit, holding sessions in Hartford, in the district of Connecticut, in a suit depending in said court, wherein said George E. Ingraham is plaintiff and said N. D. Putnam, Henry Earle, and William G. Morgan are defendants, judgment was rendered against said defendants Putnam and
4 Earle, and they having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation addressed to the said George E. Ingraham, citing and admonishing him to be and appear at the Supreme Court of the United States on the 15th day of December, 1884:

Now, therefore, if the said N. D. Putnam and Henry Earle shall

prosecute their writ of error to effect, and pay all costs if they fail to make their plea good, then this obligation to be void; otherwise, to be and remain in full force and effect.

Signed and sealed, this 8th day of December, 1884.

LEWIS E. STANTON. [L. S.]

Approved.

N. SHIPMAN,
District Judge.

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of Connecticut, Greeting:

Because of the records and proceedings, and also in the rendition of the judgment of a plea, which is in said circuit court before you, between George E. Ingraham and Putnam, Earle & Company, a manifest error hath happened, to the great damage of the said N. D. Putnam and Henry Earle, as by their complaint appears:

We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 15th day of December, A. D. 1884, in the said Supreme Court, then and there to

6 be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 8th day of December, A. D. 1884.

EDWIN E. MARVIN,
Clerk of the Circuit Court for the District of Connecticut.

7 UNITED STATES OF AMERICA, *ss:*

To George E. Ingraham, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington on the 15th day of December, A. D. 1884, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Connecticut, wherein Putnam & Earle are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the

Supreme Court of the United States, and the seal of said circuit court, at Hartford, in the district of Connecticut, this 8th day of December, A. D. 1884.

[SEAL.] N. SHIPMAN,
District Judge & one of the Judges of the Circuit Court.

8 HARTFORD, CONN., *Dec.* 8, 1884.

Due and lawful service hereof and of the writ of error herein is hereby acknowledged.

GEORGE E. INGRAHAM,
By CHAS. E. PERKINS,
His Attorney.

9 *The Return of the Judges of the Circuit Court of the United States for the District of Connecticut.*

The record and proceedings, with all things concerning the same, whereof mention is therein made, follow in these words, viz:

10 GEORGE E. INGRAHAM *v.* PUTNAM, EARLE & CO.

Be it remembered that on the 30th day of July, 1884, there was filed in court a record of a cause, removed from the superior court for Hartford county, in the words and figures following, viz:

11 To the sheriff of the county of Hartford, his deputy, or either of the constables of the town of Hartford, within said county, Greeting:

By authority of the State of Connecticut, you are hereby commanded to attach to the value of eighteen thousand dollars the goods or estate of N. D. Putnam & Henry Earle, of the city, county, and State of New York, and W. G. Morgan, of the city and county of Hartford, and State of Connecticut, partners in business under the style and firm of Putnam, Earle & Company, and them summon to appear before the superior court at the term thereof to be holden at Hartford, within and for the county of Hartford, on the fourth Tuesday of January, A. D. 1884, that is, to appear before said court on the first Tuesday of April, A. D. 1884, then and there to answer unto George E. Ingraham, of the town of Enfield, county of Hartford, and State of Connecticut, in a civil action wherein the plaintiff complains and says:

1. On and before March 10th, 1884, the plaintiff lent twenty-five thousand dollars to the defendants.

2. And paid, laid out, and expended said sum for the defendants.

12 3. And sold and delivered goods, wares, and merchandise of the price and value of said sum to the defendants.

4. And bargained and sold goods, wares, and merchandise of the price and value of said sum to the defendants.

5. And performed work of the price and value of said sum for the defendants.

6. And furnished materials of the price and value of said sum to the defendants.

7. And furnished board and lodging of the price and value of said sum to the defendants.

8. And on said day the defendants had and received said sum to and for the use of the plaintiff.

9. And used and occupied certain lands, tenements, and apartments of the plaintiff, by his permission, which use and occupation were reasonably worth said sum.

10. And used certain horses, harnesses, and vehicles of the plaintiff, by plaintiff's permission, which use was reasonably worth said sum.

11. And said sum was found to be due to the plaintiff from defendants on an account then and there stated between them.

12. Yet, though said sums are justly due to the plaintiff from the defendants, the defendants have never paid the same.

13 The plaintiff claimed twenty-five thousand dollars damages.

And you are hereby further commanded to leave a true and attested copy of this writ and of the accompanying complaint at least twelve days before the session of the court to which it is made returnable with the Charter Oak National Bank, a legal corporation, organized and existing under the laws of the United States, and having an office and place of business in said town of Hartford, which said corporation is the agent, trustee, and debtor of said defendants, and has concealed in its hands the goods, effects, and estate of said defendants, and is indebted to them.

And you are further commanded to summon said garnishee to appear before said court at the time and place first mentioned, then and there to disclose on oath whether it has concealed in its hands the goods, effects, or estate of said defendants, or is indebted to them.

Plaintiff is recognized in the sum of $100 to prosecute, &c.

Hereof fail not, but of this writ, with your doings thereon, make due return according to law.

14 Dated at Windsor Locks, this eleventh day of March, A. D 1884.

J. WARREN JOHNSON,
Justice of the Peace.

HARTFORD COUNTY, *ss:*

HARTFORD, CONN., *Mar. 11th*, A. D. 1884.

Then and by virtue hereof I attached all the goods, effects, moneys, or credits due or belonging to the within-named defendants not exempt from execution and in the hands or possession of the within-named garnishee by leaving with James P. Taylor, cashier of the Charter Oak National Bank, at his usual place of abode, in said town of Hartford, and also at the business office of the Charter Oak National Bank, in said town of Hartford, with James P. Taylor, cashier of said bank, a true and attested copy hereof at least twelve days before the session of the court to which this writ is returnable, said bank being the attorney, agent, trustee, factor, and debtor of said defendants, and said garnishee having been duly inquired of

by me, disclosed that it was not indebted to said defendants at the date hereof.

15 And on the said 11th day of March, A. D. 1884, I left a true and attested copy of this writ and complaint, with my doings endorsed thereon, with and in the hands of the within-named defendant, Henry Earle, in said town of Hartford, and on the 20th day of March, A. D. 1884, I also left a like true and attested copy of this writ and complaint, with my doings endorsed thereon, at the usual place of abode of the within-named defendant, W. G. Morgan, in said town of Hartford; and on said 20th day of March, A. D. 1884, I also left in service a like true and attested copy of this writ and complaint, with my doings endorsed thereon, with and in the hands of Lewis E. Stanton, in said town of Hartford, attorney in this State of the within-named defendants, N. D. Putnam and Henry Earle.

Attest: CHARLES A. LORD,
Deputy Sheriff.

Fees	3 00
Copies	48
Service	60
Endorsements	
Travel	50
	$4 58

16 *Plaintiff's Bill of Particulars.*

Superior Court, Hartford County. January Term, 1884.

GEORGE E. INGRAHAM, of Enfield,
vs.
PUTNAM, EARLE & CO., of New York.

PUTNAM, EARLE & CO., DR.

1883.						
Aug. 17.	To cash					$1,000 00
" "	To proceeds 25 shares Hartford carpet stock					434 00
" 18.	" "	200	"	Lackawanna R. R.	"	12,275 00
" 23.	" "	200	"	"	" "	12,275 00
" 29.	" "	100	"	"	" "	6,000 00
Sept. 1.	" "	25	"	Chicago, Burlington, & Q. stock		3,096 88
" " "	dividend from Illinois Central stock					100 00
" " "	proceeds 100 shares Lackawanna				"	6,093 75
" 4.	" "	$5,000 Mutual Union Tel. bonds.				4,100 00
" 5.	" "	100	shares	Northwestern	"	12,637 50
" 6.	" "	200	"	Lackawanna	"	12,237 50
" 7.	" "	200	"	"	"	12,337 50
" 11.	" "	200	"	"	"	12,337 50
" "	" "	25	"	Union Pacific	"	2,309 39
" "	" "	20	"	Chicago & Alton	"	2,667 50
" "	" "	interest on balance @ 6 per cent.				12 31

1883. PUTNAM, EARLE & CO., DR.

Sept.	19.	To proceeds	200	shares	Lackawanna bonds,	$12,425 00
"	"	" cash				400 00
"	25.	" proceeds	200	shares	Lackawanna bonds,	12,087 50
"	"	" "	25	"	Illinois Central "	3,221 87
"	29.	" "	200	"	Lackawanna "	12,212 50
Oct.	3.	" "	100	"	Northern Pacific " preferred	6,387 50
"	8.	" "	100	"	Lackawanna bonds,	5,893 75
"	9.	" "	100	"	Northwestern "	11,975 00
"	10.	" "	100	"	" "	12,012 50
"	"	" "	100	"	Lackawanna "	5,881 25
"	12.	" "	interest on balance at 6 per cent.			10 07
17						
"	15.	" "	100	shares	Northwestern stock,	12,062 50
"	16.	" "	100	"	Omaha preferred "	9,287 50
"	17.	" "	100	"	" " "	9,225 00
"	18.	" "	100	"	Northwestern "	11,637 50
"	"	" "	100	"	" "	11,762 50
"	19.	" "	100	"	" "	11,862 50
"	27.	" "	100	"	" "	12,237 50
"	30.	" "	100	"	Omaha preferred "	9,687 50
Nov.	7.	" "	100	"	Northwest "	12,437 50
"	10.	" "	100	"	" "	12,687 50
"	"	" "	100	"	Union Pacific "	9,037 50
"	12.	" interest on balance @ 6 per cent.				35 74
						$304,381 51

1883.		Brought over				$304,381 51
Nov.	16.	To proceeds	100	shares	Northwestern stock,	12,612 50
"	22.	" "	100	"	" "	12,462 50
"	27.	" "	100	"	Union Pacific "	8,687 50
Dec.	1.	" "	200	"	Erie "	6,125 00
"	"	" "	Wabash coupon			30 00
"	5.	" "	Wabash bond			728 50
"	"	" "	100	shares	Omaha preferred stock	9,787 50
"	6.	" "	100	"	Northwestern "	12,412 50
"	8.	" "	100	"	Chicago, Burlington & Q. stock	12,312 50
"	10.	" "	100	"	Northwestern stock	11,912 50
"	12.	" "	200	"	Chicago, Burlington & Q. stock	24,275 00
"	11.	" "	200	"	Northwestern stock	23,650 00
"	12.	" cash				6,032 26
"	"	" interest on balance @ 6 per cent.				41 44
Dec.	13.	" proceeds	100	shares	Chicago, Burlington & Q. stock	12,087 50
"	14.	" "	100	"	Northwestern stock	11,687 50
"	18.	" "	100	"	" "	11,887 50

1883. PUTNAM, EARLE & CO., DR.

Dec. 18.	To proceeds	50	shares	Chicago, Burlington & Q. stock		$6,106 25
" 22.	" "	200	"	Rock Island stock		23,775 00
18						
1883.						
Dec. 24.	To proceeds	200	shares,	Erie stock		5,625 00
" "	" "	100	"	Louisville, N. stock		4,512 50
" 27.	" "	100	"	Chicago, Burlington & Q. stock		12,037 50
" "	" "	200	"	Louisville & N. stock.		9,125 00
" 29.	" "	100	"	Chicago, Burlington & Q.		12,062 50
1884.						
Jan. 3.	" "	100	"	Louisville & N. stock,		4,525 00
" "	" "	100	"	Chicago, Burlington & Q. stock		12,112 50
" 5.	" "	100	"	Louisville & N. stock,		4,637 50
" "	" "	100	"	Union Pacific stock,		7,312 50
" "	" "	200	"	Erie stock		5,575 00
" 7.	" "	100	"	Chicago, Burlington & Q. stock		12,212 50
" "	" "	200	"	Lackawanna stock		11,725 00
" 8.	" "	100	"	St. Paul stock		9,262 50
	Carried up					621,719 96
1884.	Brought up					621,719 96
Jan. 10.	To proceeds	100	shares	Chicago, Burlington & Q. stock		12,137 50
" "	" "	100	"	St. Paul stock		9,362 50
" 12.	" "	100	"	Chicago, Burlington & Q. stock		12,062 50
" "	" "	100	"	St. Paul stock		9,212 50
" "	" "	100	"	Union [Pacific] stock,		7,700 00
" 14.	" "	300	"	" " "		22,425 00
" 16.	" "	300	"	" " "		22,200 00
" 18.	" "	100	"	Chicago, Burlington & Q. stock		12,087 50
" "	" "	500	"	Erie stock		12,687 50
" 19.	" "	100	"	Union Pacific stock,		7,412 50
" 22.	" "	100	"	Chicago, Burlington & Q. stock		11,937 50
" 24.	" "	100	"	St. Paul stock		8,712 50
" 31.	" interest on balance, @ 6 per cent.					90 54
Feb. 2.	" proceeds	100	shares	Union Pacific stock,		8,000 00
" "	" "	100	"	Omaha preferred		9,462 50
19						
" 6.	"	200	"	Union Pacific stock.		16,375 00

1884. PUTNAM, EARLE & Co., DR.

Feb. 6.	To proceeds	200 shares St. Paul stock	$18,400 00
" 11.	" "	20 " " " "	2,307 50
" "	" "	200 " Union Pacific stock,	16,375 00
" "	" "	200 " " " "	16,375 00
" 12.	" "	200 " St. Paul stock	18,575 00
" "	" "	200 " " "	18,575 00
" 18.	" "	200 " Union Pacific stock.	16,775 00
" "	" "	100 " " " "	16,675 00
" 25.	" "	200 " Illinois Cen. stock	8,912 50
" 26.	" "	200 " Union Pacific stock,	16,275 00
" "	" "	200 " St. Paul stock	18,375 00
" 29.	" interest on balance, @ 6 per cent.		12 71
	Total amount of Dr.		$971,218 21
	To interest on same from March 1, 1884		
1884.			
Feb. 9.	To cash loaned		5,000 00
	To interest on same from Feb. 9, 1884		

Copy of Note.

$5,000.00. HARTFORD, CT., *Feb'y 9th*, 1884.

On demand after date I promise to pay to the order of Geo. E. Ingraham five thousand dollars at banking office Putnam Earle & Co., with interest at the rate of 7 per cent. per annum, value received.

W. G. MORGAN.

Endorsed: Putnam, Earle & Co.

20 PUTNAM, EARLE & Co., CR.

1883.			
Aug. 18.	By	200 shares Lackawanna R. R. stock	12,237 50
" 23.	"	200 " " " "	12,237 50
" 28.	"	100 " " " "	5,950 00
Sept. 1.	"	100 " " " "	6,012 50
" 5.	"	100 " Northwest " "	12,575 00
" "	"	cash	100 00
" 6.	"	200 shares Lackawanna R. R. stock	12,162 50
" "	"	cash	94 74
" 7.	"	200 shares Lackawanna R. R. stock	12,250 00
" "	"	cash	5,879 89
" 10.	"	200 shares Lackawanna R. R. stock	12,262 50
" 12.	"	200 " " " "	12,362 50
" 24.	"	cash	200 00
" "	"	200 shares Lackawanna R. R. stock	12,062 50
" 26.	"	cash	120 30
" 28.	"	200 shares Lackawanna R. R. stock	12,150 00
Oct. 1.	"	cash	34 37

1883. PUTNAM, EARLE & CO., CR.

Oct.	2.	By	100 shares Northern Pacific preferred stock		$6,375 00
"	5.	"	100 shares Omaha preferred stock		9,762 58
"	6.	"	200 " Lackawanna stock		11,737 50
"	8.	"	100 " Northwest preferred stock		12,012 50
"	9.	"	100 " " "		11,962 50
"	13.	"	100 " " "		12,000 00
"	17.	"	100 " Omaha preferred stock		9,212 50
"	18.	"	100 " Northwest stock		11,562 50
"	"	"	100 " " "		11,687 50
"	"	"	100 " " "		11,787 50
"	24.	"	100 " " "		12,037 50
"	"	"	100 " Omaha preferred stock		9,437 50
Nov.	1.	"	100 " Northwest stock		12,162 50
"	7.	"	100 " " "		12,450 00
"	10.	"	100 " Union Pacific stock		8,962 50
"	12.	"	cash		263 67
			Carried up		$292,105 47

21

1883.			Brought up		292,105 47
Nov.	15.	By	100 shares Northwest stock		12,612 50
"	20.	"	cash		25 00
"	21.	"	100 shares Northwest stock		12,412 50
"	23.	"	100 " Union Pacific stock		8,675 00
"	"	"	cash		400 00
"	28.	"	200 shares Erie stock		5,825 00
Dec.	1.	"	cash		20 00
"	5.	"	100 shares Omaha preferred stock		9,662 50
"	6.	"	100 " Northwest stock		12,450 50
"	8.	"	100 " " "		11,887 50
"	"	"	100 " Chicago, Burlington & Q. stock		12,212 50
"	"	"	cash		59 76
"	10.	"	100 shares Northwest stock		11,887 50
"	11.	"	100 " Chicago, Burlington & Q. stock		12,212 50
"	"	"	25 " " " "		3,028 13
"	"	"	100 " Northwest stock		11,762 50
"	12.	"	25 " Chicago, Burlington & Q. stock		3,003 13
"	"	"	100 " " "		12,062 50
"	"	"	100 " Rock Island stock		11,912 50
"	"	"	cash		20 00
"	"	"	100 shares Chicago, Burlington & Q. stock		12,012 50
"	14.	"	100 " Northwest stock		11,662 50
"	17.	"	100 " " "		11,737 50
"	"	"	100 " Rock Island stock		11,825 00
"	20.	"	100 " Chicago, Burlington & Q. stock		12,137 50
"	22.	"	200 " Erie stock		5,725 00
"	"	"	cash		150 00
"	26.	"	100 shares Chicago, Burlington & Q. stock		11,950 00

1883.		PUTNAM, EARLE & Co., CR.	
Dec. 26.	By 200 shares Erie stock		85,475 00
" " "	200 " Louisville & N. stock		9,025 00
" " "	cash		59 14
" 28.	" 100 shares Chicago, Burlington & Q. stock		11,987 50
Dec. 28.	By cash		67 00
" 31.	" interest on balance @ 6 per cent.		4 22
	Carried up		548,054 35

22

1884.		Brought up	548,054 35
Jan. 2.	By 100 shares Chicago, Burlington & Q. stock		11,975 00
" " "	cash		400 00
" " "	100 shares Louisville & N. stock		4,512 50
" 4	" 200 " " " "		9,075 00
" " "	100 " Union Pacific "		7,212 50
" 5.	" 200 " D., L. & N. "		11,625 00
" 7.	" 100 " St. Paul "		9,312 50
" 8.	" 100 " Chicago, Burlington & Q. stock		12,062 50
" 9.	" 100 " St. Paul stock		9,275 00
" 12.	" cash		17 09
" "	" 100 shares Chicago, Burlington & Q. stock		12,112 50
" "	" 100 " St. Paul stock		9,212 50
" 14.	" 100 " Union Pacific stock		7,487 50
" 16.	" 300 " " " " "		22,237 50
" "	" cash		29 00
" 17.	" 300 shares Union Pacific stock		21,937 50
" "	" 100 " Chicago, Burlington & Q. stock		11,962 50
" "	" 500 " Erie stock		12,437 50
" 18.	" 100 " Chicago, Burlington & Q. stock		11,987 50
" 18.	" 100 " " " "		11,875 00
" 21.	" 100 " Union Pacific stock		7,387 50
" 23.	" 100 " St. Paul "		8,575 00
" 25.	" cash		100 00
Feb. 1.	" 100 shares Union Pacific stock		7,925 00
" 2.	" 100 " Omaha preferred stock		9,400 00
" 4.	" cash		50 00
Feb. 8.	" 200 shares Union Pacific stock		16,325 00
" "	" 200 " " "		16,325 00
" "	" 200 " St. Paul "		18,400 00
" "	" 200 " " "		18,400 00
" 14.	" 200 " Union Pacific "		16,325 00
" "	" 200 " " "		16,325 00
" "	" 200 " St. Paul "		18,625 00
" "	" cash		55 00

23

" 19.	" 200 shares Union Pacific stock		16,425 00
" 20.	" 100 " Illinois C. "		8,862 50
" 21.	" cash		45 42

1884.	PUTNAM, EARLE & CO., CR.	
Feb. 29.	By 200 shares Union Pacific stock	16,550 00
" " "	200 " St. Paul "	17,775 00
	Total amount of Cr.	957,675 86
	Total amount of Dr. account	$971,218 21
	Total amount of Cr. account	957,675 86
	Balance of account claimed	13,542 35
	To interest on balance from Mar. 1, 1884, @ 6 p'r c't.	
	To cash loaned Feb. 9, 1884	5,000 00
	To interest on same from Feb. 9, 1884	

24 *Answer.*

Superior Court, Hartford County. January Term, 1884.

GEORGE E. INGRAHAM *vs.* PUTNAM, EARLE & Co.

The defendants deny each and every allegation in the plaintiff's complaint.

Second Defence.

As to paragraphs one and two of said complaint the defendants, Nathaniel D. Putnam and Henry Earle, of the city of Brooklyn, county of Kings, and State of New York, while not admitting that any funds were either lent, paid out, or expended as in said paragraphs alleged, answer and say: That if any moneys were advanced or lent by the plaintiff, as alleged, the same were lent and advanced, not to said firm of Putnam, Earle & Co., but to one William G. Morgan, late partner in said firm of Putnam, Earle & Co., for the individual and private uses only of said William G. Morgan, with full knowledge on the part of the plaintiff that said loans, if any, were not made to said firm of Putnam, Earle & Co. to said part-
25 nership, or for any uses or purposes of said partnership, and with full knowledge on the part of the plaintiff that such loans and advance were made only for the private and individual uses of said William G. Morgan, and were intended to be applied only to his own uses.

2. And said defendants, Nathaniel D. Putnam and Henry Earle, further answer and say: That they are informed that, on account of certain of the moneys demanded in said complaint, the plaintiff holds a certain promissory note for the sum of $5,000.00, made by said William G. Morgan and payable to the plaintiff, or his order, and bearing the endorsement Putnam, Earle & Co.; and said defendants, N. D. Putnam and Henry Earle, deny their liability in respect to said note or endorsement, or any moneys represented by the same, and say that said sum of $5,000.00 was lent, if at all, by the plaintiff to William G. Morgan alone, and only for his individual and private uses, with full knowledge on the part of the plaintiff of

all the foregoing facts; and further, that said endorsement was placed upon said note by said William G. Morgan by collusion between him and the plaintiff, and with intent, on the part of said Morgan and the plaintiff, to defraud the said defendants, Na-
26 thaniel D. Putnam and Henry Earle, by means of said endorsement.

N. D. PUTNAM,
HENRY EARLE,
By LEWIS E. STANTON, *Attorney.*

27 *Amendment to Answer.*

GEORGE E. INGRAHAM *vs.* PUTNAM, EARLE & CO.

The plaintiff having since the filing of the defendants' answer presented a bill of particulars in said cause, the defendants, N. D. Putnam and Henry Earle, further answer and say that the firm of Putnam, Earle & Co., consisting of the above defendants and William G. Morgan, was formed, and said Morgan was admitted into partnership with them on January 2d, 1884, by certain partnership articles in writing, which are made part of this answer and annexed hereto, and not before that date, and that all the transactions in the bill of particulars before said date took place, if at all, between the plaintiff and William G. Morgan, who, during the years 1882 & 1883, was only the agent of said Putnam & Earle, and not partners with them, and said N. D. Putnam and Henry Earle say that as to none of the items in the bill dated in the year 1883 have they made any contract, promise, or undertaking jointly with said
28 Morgan, and that they are not under any joint liability with him or as partners with him in respect to said items.

Copy.

Articles of agreement, made this 2d day of January, 1884, between Nathaniel D. Putnam and Henry Earle, comprising the firm of Putnam & Earle, of this city, county, and State of New York, parties of the first part, and Nathaniel D. Putnam, Henry Earle, and William G. Morgan, comprising the firm of Putnam, Earle & Co., of the city & county of Hartford, State of Connecticut, parties of the second part.

The parties hereto have agreed, and by these presents do agree, to become copartners in business.

The business to be carried on by such copartnership shall be that of bankers & brokers, as the same is usually carried on in the city of New York and Hartford, and shall comprise the purchase and sale on commission of stocks, bonds, and other securities, also cereals, oil stocks, and such other commodities as may be hereafter agreed upon.

This agreement witnesseth:

29 That said parties of the first part do hereby covenant and agree to transact all the business for said parties of the second part which they may require to be done outside of said city of Hartford upon the following terms and conditions:

1st. The parties of the first part shall keep true and correct books of account, showing all commissions made on business furnished by said parties of the second part and also of all expenses directly incurred for said parties of the second part.

2d. The parties of second part shall keep true and correct books of account of business done and expenses incurred, and shall render a monthly statement of same to said parties of the first part.

3d. Said parties of the second part shall be liable for and pay to said parties of the first part fifteen per cent. of the gross expenses per annum of said parties of first part, which shall cover what shall be considered the indirect expenses of said parties of second part.

4th. Said parties of second part shall be liable for and pay to said parties of first part twenty per cent. of the net profits of said
30 parties of second part, the net profits being arrived at by deducting from the total or gross profits the total direct and indirect expenses and losses, if any, the balance remaining shall be the net profits, and twenty per cent. of this amount shall be paid to and cover the amount due to said parties of first part for the use of their capital employed on behalf of said parties of second part.

5th. Said parties of the first part shall credit to said parties of second part all premiums obtained on stocks loaned which said parties of first part may be carrying for said parties of second part, and such premiums shall be credited the same as if received by commissions.

6th. Said parties of second part shall be liable for and pay to said parties of first part all commissions paid to other brokers upon business transacted for said parties of second part, and such commissions shall be charged to the direct expenses of said parties of second part.

7th. Said parties of second part shall not participate in any way in the profits or losses of the business of said parties of first part.

31 8th. Said parties of second part do hereby agree to do a strictly commission business and not to speculate, and said W. G. Morgan, one of said parties of second part, does hereby pledge and bind himself not to speculate, either directly or indirectly, during the pendency of this contract, and he also pledges and binds himself not to use the moneys or credit of said parties of first or second part for any other purpose than that directly connected with the business proposed to be carried on.

9th. It is further agreed that such copartnership shall commence on the 2d day of January, 1884, and shall continue until the 2d day of January, 1886, unless sooner dissolved by the mutual agreement of all the parties hereto or in the manner hereinafter provided.

10th. On December (31st) thirty-first, 1884, and on December (31st) thirty-first, 1885, said parties of first part and second part shall cause to be made a true and correct statement of profits, losses, and expenses, both direct and indirect, as specified in Sec. 1, 2, 3, & 6, covering the year preceding, and after deducting from such profits all expenses as above mentioned, all losses, if any, that may have
32 been incurred by or on behalf of said parties of second part, the balance shall be deemed the net profits, and from this

amount shall be deducted the twenty per cent. due and to be paid to said parties of the first part, as provided for in Sec. 4, and the balance, after making this deduction, shall be equally divided between Nathaniel D. Putnam, Henry Earle, and William G. Morgan; that is to say, giving each thirty-three and one-third per cent. of such balance.

11th. And it is further agreed that said William G. Morgan shall have the right and power during the pendency of this agreement to withdraw monthly from his share of accrued profits a sum not to exceed three hundred dollars for each and every month.

12th. And it is further agreed that in case of any violation of any of the provisions of this agreement coming to the knowledge of any one of the parties hereto, he shall have the right and power to dissolve the copartnership hereby formed by giving written notice to all parties hereto, upon the giving of which notice said copartnership shall be *ipso facto* dissolved.

33 In testimony whereof, the said parties have hereunto set their hands and seals the day and year first above written.

PUTNAM & EARLE.	[SEAL.]
N. D. PUTNAM.	[SEAL.]
HENRY EARLE.	[SEAL.]
PUTNAM, EARLE & CO.	[SEAL.]
N. D. PUTNAM.	[SEAL.]
HENRY EARLE.	[SEAL.]
WILLIAM G. MORGAN.	[SEAL.]

Witness to the signature of Putnam & Earle, Putnam, Earle & Co., N. D. Putnam, Henry Earle:

GEORGE I. MALCOM.

Witnesses as to signature of William G. Morgan:

F. L. PORTER.

34 *Plaintiff's Replication.*

Hartford County Superior Court.

GEORGE E. INGRAHAM *vs.* PUTNAM, EARLE & CO.

The plaintiff denies all the allegations of new matter set up by defendants' answer.

Plaintiff by his att'ys,

JOHNSON & PERKINS.

35 *Petition for Removal to the Circuit Court of the United States.*

Superior Court, Hartford County. January Term, 1884.

GEORGE E. INGRAHAM *vs.* PUTNAM, EARLE & CO.

To the honorable superior court, Hartford county:

The petitioners, Nathaniel D. Putnam and Henry Earle, two of the defendants named in this action, respectfully represent that the matter and amount in dispute in the above-entitled suit exceed, exclusive of costs, the sum or value of five hundred dollars; that the

petitioners herein were at the time of the commencement of this suit, and still are, citizens of the State of New York and residents of the city of Brooklyn and county of Kings, in said State; that the plaintiff, George E. Ingraham, and one of the defendants, William G. Morgan, were at the commencement of said suit, and still are, citizens of the State of Connecticut.

And your petitioners further say that in the suit above
36 mentioned there is a controversy, which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between the present petitioners, N. D. Putnam and Henry Earle, and the said George E. Ingraham and William G. Morgan, as by the pleadings in said cause will more fully appear.

And your petitioner offers herewith a bond, with good and sufficient surety, for their entering in said circuit court of the United States on the first day of its next session a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, — shall hold that this suit was wrongfully or improperly removed thereto.

And they pray this honorable court to proceed no further herein, except to make the order of removal required by law, and to accept said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of Connecticut.

Dated at Hartford, this 21st day of April, 1884.

NATHANIEL D. PUTNAM,
HENRY EARLE,
By LEWIS E. STANTON,
Attorney.

37 Know all men by these presents, that we, Lewis E. Stanton, of Hartford, Conn., as principal, and T. M. Maltbie, of Granby, Conn., as surety, are held and firmly bound unto George E. Ingraham, of Enfield, in the State of Connecticut, in the penal sum of one thousand dollars; to the payment whereof, well and truly to be made unto said George E. Ingraham, his heirs and assigns, we bind ourselves, heirs, representatives, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas Nathaniel D. Putnam and Henry Earle, of Brooklyn, Kings county, New York, have petitioned the honorable superior court of Hartford county, Conn., for the removal of a certain cause therein pending, wherein said Ingraham is plaintiff and said Putnam and Earle are defendants, to the circuit court of the United States in and for the district of Connecticut:

Now, therefore, if said petitioners shall enter in the said circuit court of the United States on the first day of the next session a copy of the record in said suit, and well and truly pay all costs that may be awarded by said circuit court of the United States if said
38 court shall hold that said suit was wrongfully or improperly removed thereto, and shall enter their appearance in said

suit in said circuit court, then this bond to be void; otherwise, in full force.

Witness our hands and seals, this 22d day of April, 1884.

LEWIS E. STANTON. [L. S.]
T. M. MALTBIE. [L. S.]

Upon a hearing by said superior court of the foregoing petition to remove said cause to the United States circuit court, said petition was denied May 13, 1884.

FRANCIS CHAMBERS,
Ass't Clerk.

39 STATE OF CONNECTICUT, HARTFORD COUNTY,
SUPERIOR COURT, CLERK'S OFFICE.

I, Francis Chambers, a clerk of the superior court in and for said Hartford county, hereby certify the foregoing to be true copies of the writ and all proceedings had thereon in said superior court in this cause.

Witness my hand and the seal of said superior court, at Hartford, in said county, this 25th day of July, 1884.

[SEAL.] FRANCIS CHAMBERS,
A Clerk as aforesaid.

40 And on the same day J. Warren Johnson, Esq., entered his appearance for the plaintiff, and Lewis E. Stanton, Esq., entered his appearance for the defendants. And on the 20th day of September, 1884, C. E. Perkins, Esq., entered his appearance for the plaintiffs. And on the same day plaintiffs' attorneys filed motion to remand, in the words and figures following, viz:

Motion to Remand.

Circuit Court of the United States, District of Connecticut. September Term, 1884.

GEORGE E. INGRAHAM
vs.
PUTNAM, EARLE & CO. } No. 256. Law.

In the above-entitled action the plaintiff moves that the same be remanded to the superior court for Hartford county, upon the ground that the plaintiff and one of the defendants were, at the time said suit was brought, and still are, citizens of the State of Connecticut, and there is no separate controversy therein between citizens of different States, and this court has no jurisdiction of said cause.

GEORGE E. INGRAHAM,
By his attorneys, PERKINS & JOHNSON.

41 United States Circuit Court, District of Connecticut.

GEORGE E. INGRAHAM *v.* PUTNAM, EARLE & CO.

At a stated term of court held at Hartford within and for said district of Connecticut, on the 8th day of December, A. D. 1884,

the above cause came on for hearing on the plaintiff's motion to remand the same, as on file; and full hearing being had, it is thereon

Ordered, That the said cause be remanded to the superior court of the State of Connecticut for Hartford county, wherein it was originally brought.

N. SHIPMAN,
District Judge.

42 *Bill of Exceptions.*

GEO. E. INGRAHAM *v.* PUTNAM, EARLE & CO.

Be it remembered that upon the trial of the above-entitled motion it was proved that a certain statute of the State of Connecticut, being section 12 of title 19, chapter 14, page 444, of the revision of 1875, of the statutes of said State provides as follows:

"SEC. 12. In all actions against two or more defendants, if the plaintiff shall fail to sustain a good cause of action against any defendant, he shall not, for that reason, be prevented from recovering judgment against the other defendant or defendants, and the defendant or defendants against whom no recovery is obtained shall be entitled to costs."

And that said section was amended July 17, 1875, by substituting the following words:

"In all suits, when a cause of action shall be sustained in favor of or against only a part of the parties thereto, judgment may be rendered in favor of or against such parties only; but any de-
43 fendant against whom no recovery shall be obtained shall be entitled to costs; and additional parties may be made plaintiffs by amendment, and additional defendants may be cited to appear therein upon such notice and such payment of costs by the plaintiff as the court before which such action is pending may prescribe."

Which act appears in the public acts of said State of the year 1875, page 31, chapter 55.

It was also shown upon said trial that by section 33 of the act of March 28th, 1879, of said State, called the practice act, the judges of the supreme court of the State have power to make and promulgate rules and orders in order to give effect to the provisions of the act, which orders and rules have the force of law within the State, and are binding upon parties and counsel in civil actions; and among said orders and rules are the following:

"SECTION 7. In all cases not pending before a justice of the peace, whether the relief sought be legal or equitable in its nature, judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants, and the
44 court may determine the ultimate rights of the parties on each side as between themselves, and grant to the defendant any affirmative relief to which he may be entitled."

The above provision being section 7, page 20, of the Connecticut Practice Act and Rules.

Also the following rule:

"SECTION 7. Denials must fairly meet the substance of the allegation denied. Thus when the payment of a certain sum is alleged, and, in fact, a less sum was paid, the defendant cannot simply deny the payment generally, but must set forth how much was paid to him, and when any matter of fact is alleged with divers circumstances it shall not be sufficient to deny it as alleged, but so much as is true and material should be stated or admitted and the rest only denied."

Which rule is section 7, chapter 4, page 17, of the Connecticut Practice Act and Rules.

Also that a statute of said State, passed March 28, 1879, and found upon page 432 of the public acts of 1879, and known as the practice act, provides as follows:

SECTION 3. The defendant, in his answer, shall specially deny such allegations of the complaint as he intends to controvert, ad-
45 mitting the truth of the other allegations, unless he intends, in good faith, to controvert all the allegations, in which case he may deny them generally, as follows: "The defendant denies the truth of the matter contained in the plaintiff's complaint." He may also, in his answer, state special matters of defense, and shall not give in evidence matter in avoidance, or of defense, consistent with the truth of the material allegations of the complaint, unless in his answer he states such matter specially. Under a general denial the plaintiff shall be bound to prove the material facts alleged in the complaint. If the defendant intends to controvert the right of the plaintiff to sue as executor or as trustee, or in any other representative capacity, or as a corporation, or the execution or delivery of any written instrument or recognizance sued upon, he shall deny the same in his answer specifically.

SEC. 4. The plaintiff may demur or reply to the answer, and in such reply he may admit some and deny other of the allegations; or by a general denial of the defendant's answer, where the
46 answer is special, put the defendant upon proof of all material facts in the answer alleged; but under such general denial he may not give in evidence any matter in avoidance, unless it be specially replied. Further pleadings, subsequent in their nature, may be had, if necessary, by leave of the court.

SEC. 10. Allegations or denials, made without reasonable cause and found untrue, shall subject the party pleading the same to the payment of such reasonable expenses, to be taxed by the court, as may have been necessarily incurred by the other party by reason of such untrue pleading, provided that no expenses for counsel fees shall be taxed exceeding ten dollars for any one offence.

Also, that certain other rules of practice duly adopted as aforesaid provide as follows, being sections 4, 5, & 6, of page 16, Connecticut Practice Act and Rules:

SEC. 4. Every material allegation in any pleading which is not denied by the adverse party shall be deemed to be admitted, unless he avers that he has not any knowledge or information thereof sufficient to form a belief.

47 SEC. 5. Pleading a general denial when there is any material allegation in the complaint which the defendant either knew was true, or did not believe to be untrue, shall subject the party to the payment provided for in section 10 of the practice act. Counsel fees taxable under said section shall not be less than five dollars.

SEC. 6. No facts can be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statement, but show notwithstanding that he had no cause of action, must be specially alleged. Thus, accord and satisfaction, arbitrament and award, coverture, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was *non compos mentis*, payment, release, and the statute of limitations, must be specially pleaded, while advantage may be taken under a simple denial of such defenses as contributory negligence, the statute of frauds, or title in a third person to what the plaintiff sues upon or alleges to be his own.

48 The court finds that the above statutes as amended and said rules of practice are now existing and in force in the State.

Wherefore upon the trial the defendants, N. D. Putnam and Henry Earle, claimed as matter of law, that notwithstanding the general replication of the plaintiff, still the facts set up in the answer stand admitted, and that upon the question whether or not the cause be removable into the Federal court, the plaintiff, having filed no specific denial of the answer, cannot deny the existence of the two partnerships, Putnam & Earle and Putnam, Earle & Co., and that the second partnership was formed Jan. 2, 1884, and not earlier than that date.

The said defendants also insisted in argument that the accounts and dealings of the plaintiff with said two firms were separate and distinct from each other, and that as the plaintiff has not in his pleadings alleged that the new firm of Putnam, Earle & Co. are or have in any way become liable for the obligations of the old

49 firm of Putnam & Earle, therefore the demands of the plaintiff, who is a citizen of Connecticut, against the firm of Putnam & Earle, both partners in which are citizens of New York, constitute a separate controversy, to which the defendant, Wm. G. Morgan, is not a necessary or proper party.

The defendants, N. D. Putnam and Henry Earle, also upon the argument insisted that under the statute aforesaid, as amended, of the State of Connecticut, and under the rule of practice relating to judgments in civil actions, if the plaintiff shall fail to make out a cause of action against Wm. G. Morgan, the only Connecticut defendant, still he may recover a separate judgment against said Put-

nam and Earle, or either of them, and that they, being both citizens of the State of New York, are compelled, if the cause be not removed, to litigate with the Connecticut plaintiff the affairs of Putnam & Earle and the accounts and dealings of the plaintiff with that firm in the State court, although said defendants claim that said matters are and were distinct and separate from the
50 affairs of Putnam, Earle & Co., or any dealings of the plaintiff with Putnam, Earle & Co.

And said defendants Putnam and Earle, upon the question whether the cause be removable to the Federal court, claimed that the liability on their part to be subjected to a separate judgment in favor of the plaintiff against them without joining the defendant Morgan in the judgment, creates a separate controversy between the plaintiff and said Putnam and Earle which can be fully determined between them without the presence of the other defendant.

And said N. D. Putnam and Henry Earle upon the trial also claimed that whereas under said rule of practice in Connecticut the court may not only render judgment for or against one or more of several defendants, but may determine the ultimate rights of parties on each side as between themselves, the controversy between the plaintiff and Putnam and Earle is separable from the controversy of the plaintiff with Putnam, Earle & Co.; and further, that there is in the case a controversy between the plaintiff and each defendant which is separable from that with the other defend-
51 ants, and also a separate controversy between the Connecticut defendant and the New York defendants.

And the defendants Putnam and Earle also upon the trial claimed that the facts set up in their answer in relation to a certain note of $5,000.00, signed by William G. Morgan and endorsed "Putnam, Earle & Co.," show a conspiracy on the part of the plaintiff Ingraham and said Wm. G. Morgan, both citizens of Connecticut, to defraud N. D. Putnam and Henry Earle, both citizens of New York, and presents a separable controversy between citizens of different States; and also that under the laws and rules of practice in Connecticut the rights of the defendant Morgan and the defendants Putnam and Earle, and their several obligations in respect to said note, are to be determined in the present suit.

The defendants Putnam and Earle, upon the trial of the question of removal, insist that Morgan alone is liable to pay said $5,000.00 note to the plaintiff, and that there is thus presented, not a mere denial of joint liability on the part of all three defendants, but a
52 separate controversy between the defendant Morgan and the defendants Putnam and Earle.

The court being of opinion that no separable controversy wholly between Putuam & Earle on the one hand and the plaintiff on the other, which can be wholly determined between them, is presented in the cause, ordered the cause to be remanded to the State court. To all which rulings of the court the said defendants duly excepted; and inasmuch as said several matters do not appear by the record, said defendants' counsel request the presiding judge at the trial to allow and sign this bill of exceptions, which, in pur-

suance of said request and the statutes in such case provided, is done, and this bill of exceptions, containing the several matters aforesaid, is allowed and signed as of the term of the court aforesaid, to wit, the September term of said court, A. D. 1884.

N. SHIPMAN,
District Judge.

53 *Assignment of Errors.*

Supreme Court of the United States. December Term, 1884.

GEORGE E. INGRAHAM *v.* PUTNAM, EARLE & Co.

Afterwards, to wit, on the 15th day of December, 1884, in this same term, before the justices of the Supreme Court of the United States, come the said Nathaniel D. Putnam and Henry Earle, by Lewis E. Stanton, their attorney, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1. In that the court did not hold the cause to be removable into the circuit court, but ordered said cause to be remanded to the State court.

2d. In that the court did not hold that there is in the cause a controversy which is wholly between citizens of different States, to wit, between the plaintiff, a citizen of Connecticut, and said two defendants, Putnam and Earle, who are citizens of the State of
54 New York, which can be fully determined as between them; but, on the contrary, did hold as matter of law that no separable controversy is presented by pleadings and record in said cause.

3d. In that the court did not decide that upon the record and pleadings in the cause there legally exists a separate controversy between said Geo. E. Ingraham and William G. Morgan, citizens of Connecticut, and the two defendants, Putnam and Earle, citizens of New York.

4th. In that the court declined to hold that either the liability of the defendants Putnam and Earle to be subjected under the laws of Connecticut to a separate judgment against them, or either of them, or their liability to be subjected to a final determination of their uitimate rights as between themselves and said Wm. G. Morgan, the Connecticut defendant, presents any separable controversy between said defendants and the plaintiff, or between said defendants and Morgan, which can be fully determined between them, but did hold and decide as matter of law that there is no separable controversy in the cause.

55 And the said N. D. Putnam and Henry Earle pray that the aforesaid judgment rendered upon the motion to remand may be reversed, annulled, and altogether held for naught, and that they may be restored to all which they have lost thereby.

N. D. PUTNAM,
HENRY EARLE,
By LEWIS E. STAFTON,
Attorney.

56 I, Edwin E. Marvin, clerk of the circuit court of the United States for the district of Connecticut, in the second circuit, do hereby certify that the above and foregoing is a full and correct transcript of the record and proceedings in the said court in the case of George E. Ingraham against Putnam, Earle & Company.

In testimony whereof, I have set hereto my hand and the seal of said court, at Hartford, in said district, this 13th day of December, A. D. 1884.

[SEAL.] E. E. MARVIN, *Clerk.*

Endorsed on cover: Connecticut C. C. U. S. No. 1246. N. D. Putnam & Henry Earle, plaintiffs in error, *vs.* George E. Ingraham. Filed 17th December, 1884.

56 I, Edwin E. Marvin, clerk of the circuit court of the United States for the district of Connecticut, in the second circuit, do hereby certify that the above and foregoing is a full and correct transcript of the record and proceedings in the said court in the case of George E. Ingraham against Putnam, Earle & Company.

In testimony whereof, I have set hereto my hand and the seal of said court, at Hartford, in said district, this 13th day of December, A. D. 1884.

[SEAL.] E. E. MARVIN, *Clerk.*

Endorsed on cover: Connecticut C. C. U. S. No. 1246. N. D. Putnam & Henry Earle, plaintiffs in error, *vs.* George E. Ingraham. Filed 17th December, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1246.

N. D. PUTNAM AND HENRY EARLE,

Plaintiffs in Error,

vs.

GEORGE E. INGRAHAM,

Defendant in Error.

In Error to the Circuit Court for the District of Connecticut.

LEWIS E. STANTON,
HERBERT E. DICKSON,
EDWARD W. BELL,

Of Counsel for Plaintiffs in Error.

C. G. BURGOYNE, "Quick" Printer, 146-150 Centre Street, New York.

Supreme Court of the United States,

OCTOBER TERM, 1884.

No. 1246.

N. D. PUTNAM and HENRY EARLE,
Plaintiffs in Error,

AGAINST

GEORGE E. INGRAHAM,
Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of Facts.

It appears from the complaint that this action was brought in the Superior Court of the State of Connecticut, on the eleventh day of March, 1884, by George E. Ingraham, a resident of the State of Connecticut, against "N. D. Putnam and Henry Earle, of the City, County and State of New York, and W. G. Morgan, of of the City and County of Hartford, and State of Connecticut, partners in business under the style and firm

of Putnam, Earle & Company," to recover twenty-five thousand dollars damages. The complaint contained simply the common counts, and did not show upon which of the eleven counts enumerated the plaintiff intended to rely, nor what was his real cause of action (Record, p. 3).

The plaintiff subsequently filed a bill of particulars which disclosed that his demand was founded on a promissory note to plaintiff (defendant in error) for $5,000, dated February 9th, 1884, signed by W. G. Morgan, as maker, and purporting to be endorsed by Putnam, Earle & Co., and for the balance of an account for the purchase and sale of stocks, commencing on August 17, 1883, and continuing to and including February 29, 1884 (Record, pp. 5–11).

The non-resident defendants, Putnam and Earle, only answered. The resident defendant Morgan, although duly served with process, has not appeared in the action, or answered, and is hopelessly in default.

The non-resident defendants, answering before the filing of the bill of particulars, denied all the allegations of the complaint; averred that if plaintiff had loaned any money, as alleged, he had loaned it only to Morgan for Morgan's private use, with full knowledge that it was not for the firm or its uses, and that the promissory note for $5,000 merely represented money loaned by the plaintiff to Morgan for his private uses, as the plaintiff well knew, and that the firm endorsement had been placed upon the note by a fraud, contrived between the plaintiff and Morgan (Record, page 11).

After plaintiff had filed his bill of particulars, the said non-resident defendants filed a further and amend-

ed answer in which they averred that the firm of Putnam, Earle & Co. was not formed until January 2, 1884, as appears by a copy of the articles of copartnership annexed to said amended answer. That none of the transactions as stated in the alleged account as having occurred in the year 1883 had any thing to do with the firm of Putnam, Earle & Co., but were between the plaintiff and said non-resident defendants, as the firm of Putnam & Earle, if at all, and while defendant Morgan was only their agent and not a partner, and that as to none of the items of said bill of particulars claimed to have been in 1883, were they under any joint liability with Morgan or as partners with him. (Record, pp. 12–14).

To all these special allegations of Putnam and Earle, the plaintiff filed only a general denial as a replication. (Record, p. 14.)

After the replication of plaintiff had been filed, and on April 22, 1884, the defendants Putnam and Earle filed in the State Court their petition and bond for removal of the cause into the Federal Court on the ground of the citizenship of the parties, and also on the ground that there is in the action a controversy which is wholly between citizens of different States, and can be fully determined as between them, to wit, a controversy between Putnam and Earle on one side and the said Ingraham and Morgan on the other.

The State Court denied the petition, and the non-resident defendants thereupon filed copies of the record in the Circuit Court of the United States in the District of Connecticut, and, upon motion of plaintiff, that Court remanded the case to the State Court (Record, pp. 14–22).

This writ of error is by the said non-resident defendants from the order remanding the case.

Assignment of Errors.

The Circuit Court erred:

1. In that it did not hold the cause to be removable into the Circuit Court, but ordered said cause to be remanded to the State Court.

2. In that it did not hold that there is in the cause a controversy which is wholly between citizens of different States, to wit, between George E. Ingraham, a citizen of Connecticut, and said two defendants, Putnam and Earle, who are citizens of the State of New York, which can be fully determined as between them; but, on the contrary, did hold as matter of law that no separable controversy is presented by pleadings and record in said cause.

3. In that it did not decide that upon the record and pleadings in the cause, there legally exists a separate controversy between said George E. Ingraham and William G. Morgan, citizens of Connecticut, and the two defendants, Putnam and Earle, citizens of New York.

4. In that the Court declined to hold that either the liability of the defendants Putnam and Earle to be subjected under the laws of Connecticut to a separate judgment against them, or either of them, or their liability to be subjected to a final determination of their ultimate rights as between themselves and said Wm. G. Morgan, the Connecticut defendant, presents any separable controversy between said defendants and the plaintiff, or between said defendants and Morgan,

which can be fully determined between them, but did hold and decide, as matter of law, that there is no separable controversy in the case.

ARGUMENT.

I.

The pleadings having all been filed before the petition for removal, the controversy or controversies in the action, and the proper parties to such controversies must be ascertained from an examination of the complaint with the bill of particulars and the answer and amended answer.

In Hanover Fire Ins. Co. vs. Keogh, 7 Fed. Rep., 764, BLATCHFORD, J., says:

"The pleadings having all been put in before the petition for removal was filed, the controversies and the questions as to who are the real parties to them must be judged of by those pleadings."

Also in Taylor vs. Rockefeller, 18 Am. Law Reg., 298 (U. S. Cir. Ct., W. Dist. of Penn., 1879), STRONG, J., says:

"Whether we have jurisdiction or not depends both upon the citizenship of the parties and the controversy involved. What the citizenship is must be determined from the bill filed by the plaintiffs; and to the bill with its exhibit, the answer and the petition for removal alone can we look for the controversy between the parties, so far as it bears upon our jurisdiction."

An examination of the complaint discloses that the plaintiff and defendant Morgan are citizens of Connecticut, and that the defendants Putnam and Earle

are citizens of New York. Upon looking into the bill of particulars which in Connecticut is a part of the complaint, being an amendment of it and equivalent in substance to shutting out all counts except those to which the bill is applicable (Guile vs. Brown, 38 Conn., 237), we find that one of the items is a promissory note made by Morgan to the plaintiff for $5,000, dated February 9, 1884, and alleged to be indorsed by Putnam, Earle & Co. (Record, p. 8), and that the most of it consists of a great number of debits and credits on account of transactions in stocks which the plaintiff had carried on apparently as a customer with the defendants as stock brokers, covering the time from August 17, 1883, to February 29, 1884, at which time there appeared to be a balance of $13,542.35 in plaintiff's favor (Record, p. 11); but by deducting the credits (Record, p. 10) from the debits (Record, p. 7) of the year 1883, there appears a balance during that year of a little over $6,300 in plaintiff's favor, thus showing that the balance accruing on the items of the account from January 1, 1884, to February 29, 1884, was about $7,244.35.

By their answers the defendants Putnam and Earle, *first*, deny any indebtedness to the plaintiff (Record, p. 11); *second*, they set up a defense of knowledge by plaintiff that the money loaned was for Morgan's personal use; *third*, allege fraud and collusion by and between plaintiff and Morgan in the endorsement of the firm name on the promissory note, and *fourth*, allege that all transactions prior to January 1, 1884, were between plaintiff and them alone and not jointly with Morgan (Record, pp. 11, 12), and the articles of copartnership show that the firm of Putnam, Earle & Co.,

formed January 2, 1884, did not participate in any way in the profits or losses of the business of the firm of Putnam & Earle (Record, p. 13).

It is evident, therefore, from the pleadings that in this action are four separate and distinct causes of action. *First*, on the note for $5,000; *second*, on the account from January 2, 1884, to February 29, 1884; *third*, for fraud and collusion in endorsing the note; and *fourth*, on the account from August 17, 1883, to January 1, 1884. Separate actions might have been brought on any one of these alone, and there are therefore four separate controversies.

In Gudger vs. Western N. C. R. Co., 21 Fed. Rep., 81, DICK, J., says, at p. 83:

"When there are separate and distinct causes of action in the same suit, either of which might have been sued on alone, then there are separate controversies within the meaning of the statute. Boyd vs. Gill, 19 Fed. Rep., 145, and cases cited."

The pleadings also show that there is no controversy as to the existence of the two firms, the date of formation of the firm of Putnam, Earle & Co., the truth of the articles of copartnership, and the citizenship of the parties.

It is entirely clear that the plaintiff Ingraham had dealings with two firms, one a New York firm, both partners of which resided in that State where the firm was located. Had the plaintiff sued that firm in a State Court, the action would, of course, have been removable.

The other was a Connecticut firm. It had in it a Connecticut partner, and its place of business was located in that State. If the plaintiff sues that firm and

puts into his suit any controversy which is wholly between him and citizens of a State other than his own, and which can be fully determined as between them, this suit also is removable.

But he has put into his case a long account which accrued, if at all, before the Connecticut firm came into existence.

All special averments of the answers in regard to the two firms, the formation of the new one, the date of it, the citizenship of the parties, &c., stand admitted upon the record.

The plaintiff filed a general reply denying all new matter, but that is no denial of such special averments as these. It is merely an evasive denial.

The Connecticut Practice Act and Rules, p. 16, sec. 4 (Record, p. 18), expressly declares that every material allegation, not denied by the adverse party, shall be deemed to be admitted unless, indeed, the pleader avers his ignorance of the truth. Again, the rule under the same act, p. 16, sec. 7 (Record, p. 18), provides as follows:

> "Denials must fairly meet the substance of the allegation denied. Thus, when the payment of a certain sum is alleged, and, in fact, a less sum was paid, the defendant cannot simply deny the payment generally, but must set forth how much was paid to him, and when any matter of fact is alleged with divers circumstances, some of which are untruly stated, it shall not be sufficient to deny it as alleged, but *so much as is true and material should be stated or admitted and the rest only denied.*"

A general denial such as the plaintiff filed is a mere evasion. He was called upon specifically to answer whether those stock transactions of 1883 were not between him and the two New York defendants, who were

partners in a New York firm, and who might have the right to remove their controversy into the Federal Court. He was called upon to answer in good faith whether he disputed the partnership articles, or the date of them, or the facts disclosed in them that the old firm was a New York partnership composed wholly of New York citizens, and the further fact shown by the dates in the bill of particulars, that with that New York firm he had been operating in stocks for four and one-half months.

Under the wholesome rules of pleading which prevail in Connecticut, a party cannot play fast and loose with the Court. He must answer frankly and fairly. What he will not meet he admits. A denial of the kind prohibited by the above rule is in the Practice Act of Connecticut indexed as an "evasive denial." The rules were prepared by the Connecticut judges pursuant to the authority given by the act. True, the party may deny generally if he does so in good faith. But there cannot possibly be good faith in the evasion of such specific averments as defendants made against the plaintiff, and as to matters peculiarly within his own knowledge.

Plaintiff will not say whether he dealt with two firms or with one, or whether for more than four months he dealt in stocks exclusively with citizens of New York.

He insists that he is demanding all these items against all the defendants jointly, and that he cannot and will not in the State Court claim any recovery against Putnam & Earle alone. But this is also an evasion. Defendants put distinctly to him the proposition that he had been dealing in stocks from Aug. 17,

1883, to Jan. 2, 1884, with Putnam & Earle, who are citizens of New York. He simply denies.

Then with whom had he been dealing during that period? Was he not called upon to answer?

Defendants said, that for those transactions, Putnam & Earle alone were accountable. If he simply denies, then who is liable? He was called upon to answer as to any facts within his knowledge.

Is the new firm liable? When did it become so and how? Can the right of New York defendants to remove controversies in respect to the dealings of a New York firm with a Connecticut customer be taken away, when that customer sues them and will not even aver that any other person, firm or party had the slightest thing to do with the transactions and controversies which they seek to remove?

II.

The necessary parties to the first and second causes of action or controversies are the plaintiff and all the defendants. But the defendant Morgan is hopelessly in default. He was bound to appear on the second day of the session of the Court to which the process was returnable, *i, e.,* the day after "the first Tuesday of April, A. D. 1884" (Record, p. 3), which was April 2, 1884, or be defaulted. Gen. Stats. of Conn., Revision of 1875, p. 41, Sec. 16. He is therefore now a mere nominal defendant, and there is no controversy between him and plaintiff.

In McCallon vs. Waterman, 1 Flipp, 651, BROWN, J., says at p. 654:

"A default has practically the same effect as a verdict. Until set aside, it is a final determination of the matters set up in the declaration. The defendant can take no step in the cause until the default is vacated, and can be heard only to question the amount of damages. 'Default,' says Tidd, 'is an admission of the cause of action.' In *Johnson vs. Pierce*, 12 Ark., 599, it is said: 'By failing to defend, the defendant admitted the truth of the allegations contained in the declaration; that is, he admitted the existence of every fact which the plaintiff would have been called to prove in order to maintain his action; because, by refusing to make an issue with the plaintiffs upon the facts set forth by them, he deprives them of the opportunity of making such proof, and therefore from necessity the facts must stand upon the same principle that whatever is not traversed in the pleadings is admitted."

In Berrian vs. Chetwood, 9 Fed. Rep., 678, BLATCHFORD, J., said:

"When the petition for removal was presented and the bond approved, the defendant's time to answer had expired. He was in default, and there was no controversy between him and the plaintiff, within the meaning of the statute, so as to make a case for removal."

The real controversy, therefore, as to the first two causes of action, is between the plaintiff on one side and Putnam and Earle on the other; and as the plaintiff and said defendants are citizens of different States, the cause is removable, for the presence of a mere formal or nominal defendant of the same State with the plaintiff will not prevent the removal of a case.

Walden vs. Skinner, 101 U. S., 577–589.

Bacon vs. Rives, 106 *Id.*, 99–104.

III.

In the third cause of action, *i. e.*, fraud and collusion, Putnam and Earle are the parties on one side and Ingraham and Morgan on the other, for the two former charge that Morgan, by fraud, placed the endorsement "Putnam, Earle & Co." upon the note for $5,000, and that he alone ought to pay it. This is a controversy between these defendants which, under the Connecticut practice, can be determined between them in this action. The Connecticut Practice Act and Rules, p. 20, Sec. 7, provides that: "In all cases not pending before a Justice of the Peace, whether the relief sought be legal or equitable in its nature, judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and the Court may determine the ultimate rights of the parties on each side as between themselves and grant to the defendant any affirmative relief to which he may be entitled." (Record, p. 17.)

This statute applies to suits against a partnership, and judgment may be rendered against any partner.

Benedict vs. Stevens, 25 Conn., 394.

It also applies to partnership contracts and makes the defendants severally liable to the same extent as tort feasors are at common law.

Dean vs. Savage, 28 Conn., 359.

The New York defendants can, therefore, carry on their controversy with Morgan, the Connecticut defendant. In this controversy the plaintiff is on the same side with Morgan. The interests of the two Connecticut parties is exactly adverse to that of the two New York parties. The parties should therefore be

arranged according to their real interest whether they are plaintiffs or defendants. This can be done under the first clause of the second section of the Removal Act of March 3, 1875.

In Removal Cases, 100 U. S., 457, Mr. Chief Justice WAITE delivered the opinion of the Court, construing the 2d section of Act of 1875, says on p. 468 *et seq.*:

"This we understand to mean that when the controversy about which a suit in the State Court is brought is between citizens of one or more States on one side and citizens of other States on the other, either party to the controversy may remove the suit to the Circuit Court, without regard to the position they occupy in the pleadings as plaintiffs or defendants. For the purpose of a removal the matter in dispute may be ascertained, and the parties to the suit arranged on opposite sides of that dispute. If in such arrangement it appears that those on one side are all citizens of different States from those on the other, the suit may be removed. Under the old law the pleadings only were looked at, and the rights of the parties in respect to a removal were determined solely according to the position they occupied as plaintiff or defendants in the suit. *Coal Company vs. Blatchford*, 11 Wall., 174. Under the new law the mere form of the pleadings may be put aside, and the parties placed on different sides of the matter in dispute according to the facts. This being done, when all those on one side desire a removal, it may be had, if the necessary citizenship exists."

IV.

It is clear from the pleadings that Morgan has no interest whatever in, nor is he a proper party to, the controversy in the fourth cause of action, for that accrued before he became partner, and, as appears by the

articles of copartnership annexed to the amended answer, the new firm was not entitled to any of the profits nor liable for any of the debts of the old firm (Record, p. 13).

Plaintiff's bill of particulars shows that there is a balance obtained from the transactions of 1883, in plaintiff's favor and against Putnam and Earle, and before Morgan became a partner, of about $6,300. Plaintiff may recover this last amount from Putnam and Earle separately in this action, under the law of Connecticut.

"In all actions against two or more defendants, if the plaintiff shall fail to sustain a good cause of action against any defendant, he shall not for that reason be prevented from recovering judgment against the other defendant or defendants; and the defendant or defendants against whom no recovery is obtained shall be entitled to costs.

Gen. Stats. Conn., Revis. 1875, p. 444, Sec. 12 (and Record, p. 17).

Amended July 17, 1875, as follows:

"In all suits where a cause of action shall be sustained in favor of or against only a part of the parties thereto, judgment may be rendered in favor of or against such parties only," &c. (Record, p. 17).

Also the rule under the Connecticut Practice Act, Sec. 7, cited in the foregoing paragraph.

Thus it appears that the plaintiff is entitled to obtain a judgment if he can make out his case, which shall resemble a decree in equity. He can have a judgment against Putnam and Earle, New York partners and defendants, or against Putnam, Earle & Co., with New

York and Connecticut parties joined, or against any one or two individual defendants.

In Boyd vs. Gill, 19 Fed. Rep., 146, 149, it was distinctly held that where the cause of action is joint and several the non-resident defendant may have a removal.

The action in that case was substantially an action of tort, and the statute of Connecticut has put the defendants as to several liability in the same position as tort feasors.

Dean vs. Savage, 28 Conn., 359.

In Barney vs. Latham, 103 U. S., 205, Mr. Justice HARLAN, speaking of the controversy in that case, says:

"Such a controversy does not cease to be one wholly between the plaintiffs and those defendants, because the former, for their own convenience, choose to embody in their complaint a distinct controversy between themselves and the land company."

And construing the second clause of the second section of the Removal Act of 1875, he says, at p. 208:

"We will be aided in our construction of that act by recalling as well the language as the settled interpretation of previous enactments upon the subject of removal of causes from State Courts."

After quoting from the Act of July 27, 1866, c. 288, he continues:

"This provision is explicit, and leaves no room to doubt what Congress intended to accomplish. It proceeds, plainly, upon the ground, among others, that a suit may, under correct pleading, embrace several controversies, one of which may be between the plaintiff and that defendant who is a citizen of a State other than that in which the suit is brought; that to the final determination of such separate controversy the other defendants may not be indispensable parties; that in such

a case, although the citizen of another State, under the particular mode of pleading adopted by the plaintiff is made a co-defendant with one whose citizenship is the same as the plaintiff's, he should not, as to his separable controversy, be required to remain in the State Court, and surrender his constitutional right to invoke the jurisdiction of the Federal Court, leaving the plaintiff, if he so desires, to proceed, in the State Court, against the other defendant or defendants."

After quoting the second section of the Act of March 3, 1875, c. 137, and referring to the construction of the first clause of that section in Removal Cases, 100 U. S., 457, the learned Justice continues, on p. 212 :

"We are of opinion that the intention of Congress, by the clause under consideration, was not only to preserve some of the substantial features or principles of the Act of 1866, but to make radical changes in the law regulating the removal of causes from State courts. One difference between that act and the second clause of the second section of the Act of 1875 is, that whereas the former accorded the right of removal to the defendants who were citizens of a State other than that one in which the suit was brought if between them and the plaintiff or plaintiffs, there was, in the suit, a controversy finally determinable as between them, without the presence of their co-defendants, or any of them, citizens of the same State with plaintiffs ; the latter gave such right to any one or more of the plaintiffs or the defendants actually interested in such separate controversy. Both acts alike recognized the fact that a suit might, consistently with the rules of pleading, embrace several distinct controversies. But, while the Act of 1866, in express terms, authorized the removal only of the separable controversy between the plaintiff and the defendant or defendants seeking such removal, leaving the remainder of the suit, at the election of the plaintiff, in the State Court, the Act of 1875 provides, in that class of cases, for the removal of the entire suit."

In Taylor vs. Rockefeller, 18 Am. Law Reg., 298 (U. S. Cir. Ct., W. Dist. of Penn., 1879), motion to remand

was made among other things because the record showed that the Court had no jurisdiction of the case.

STRONG, J., delivering the opinion of the Court, says:

"It is certain the Act of 1875 confers a right to remove cases which could not have been removed under any former act. It expressly declares that when in any suit, mentioned in the second section, there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the plaintiffs or defendants, actually interested in such controversy, may remove said suit into the Circuit Court. It is not where the controversy, or even the main controversy, is between such citizens. The meaning of the clause is not obscure. In many suits there are numerous subjects of controversy, in some of which one or more of the defendants is actually interested, and other defendants are not. The right of removal is given where any one of those controversies is wholly between citizens of different States, and can be fully determined as between them, though there may be other defendants actually interested in other controversies embraced in the suit. The clause, 'a controversy which can fully be determined as between them,' read in connection with the other words, 'actually interested in such controversy,' implies that there may be other parties to the suit, and even necessary parties, who are entitled to remove it. Such other parties must be indispensable to a determination of that controversy which is wholly between the citizens of different States, or their being parties to the action is no obstacle to a removal of the case into the Circuit Court.

* * * * * *

"Indeed, according to the liberal reading of the statute (a reading quite in harmony with the Constitution), the right of removal, and the jurisdiction of this Court exists, though the controversy between the plaintiffs and the defendants who are petitioners for the removal be not the main controversy in the case. It is enough if there be a controversy wholly between citizens of different States which can be fully determined as between them, though it may not be fully determined as between the plaintiffs and the other

defendants. The phrase 'as between them' is significant. And there is no necessary embarrassment attending such a removal. The entire suit is removed because of the controversy it involves between citizens of different States, and the Circuit Court, having thus obtained jurisdiction, is competent to determine all the controversies involved between the plaintiffs and the other defendants."

This controversy, therefore, can be fully determined as between plaintiff and Putman and Earle without the presence of Morgan, and the fact that he has been made a co-defendant by plaintiff will not defeat the right of removal. And it is enough to entitle the non-resident defendants to a removal that this separable controversy exists in the case, although it may not be the main controversy.

V.

The order remanding the case should be reversed.

LEWIS E. STANTON,
HERBERT E. DICKSON,
EDWARD W. BELL,
For Plaintiffs in Error.

Jan. 31, '85.

114-57

Supreme Court of the United States,

OCTOBER TERM, 1884.

No. 1246.

PUTNAM, EARLE & CO., Plaintiffs in Error,

VS.

GEORGE E. INGRAHAM, Defendant in Error.

In Error to the Circuit Court for the District of Connecticut.

BRIEF

Of Mr. PERKINS,

Of Counsel for the Defendant in Error.

HARTFORD, CONN.
PRESS OF THE CASE, LOCKWOOD & BRAINARD COMPANY.
1885.

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PUTNAM, EARLE, & Co.,
PLAINTIFFS IN ERROR,
vs.
GEORGE E. INGRAHAM,
DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT FOR THE DISTRICT OF CONNECTICUT.

BRIEF OF MR. PERKINS FOR DEFENDANT IN ERROR.

This is a writ of error brought by Putnam, Earle & Co., from the judgment of the above-named Circuit Court, remanding a suit brought by George E. Ingraham against them in the Superior Court for Hartford County in the State of Connecticut, which they removed to the Circuit Court, upon their claim that it was a case which came under the last clause of section 2, of the act of March 3, 1875, relating to the removal of causes, which clause is as follows:

"And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between

them, then either one or more of the plaintiffs or defendants actually interested in such controversy may remove said suit into the Circuit Court of the United States for the proper district."

STATEMENT OF THE CASE.

This suit was brought by George E. Ingraham, a resident of the State of Connecticut, against Nathaniel D. Putnam and Henry Earle, who were residents of the State of New York, and William G. Morgan, who was a resident of Connecticut, these three composing a firm doing business in New York and Hartford under the firm name of Putnam, Earle & Co.

There was a bill of particulars filed in the case in the Superior Court, showing transactions between Putnam, Earle & Co. and Ingraham in the purchase and sale of stocks by them for him, and also a note made by Morgan personally and endorsed by the firm for $5,000, the whole amount claimed by the plaintiff from Putnam, Earle & Co., being about $17,000.

The defendants in the Superior Court filed a general denial, and also a further answer setting up that a part of the transactions stated in the bill of particulars were between the plaintiff and the firm of Putnam & Earle, which was a different firm from that of Putnam, Earle & Co., and all the members of which, viz., Putnam and Earle, resided in New York State; and also that the note for $5,000 was an individual debt of Morgan to Ingraham, and that the endorsement of Putnam, Earle & Co. upon it was improperly made by Morgan for his own debt, and was known to be so by Ingraham, and therefore the firm were not liable upon it.

All these allegations were denied by the plaintiff by a replication.

The defendants, Putnam & Earle, filed a petition in the Superior Court in this stage of the case, to remove it to the Circuit Court, on the ground that the pleadings presented a controversy "wholly between citizens of different States," but the Superior Court refused to grant the petition upon the ground that there was no such controversy. They then filed copies in the Circuit Court, and upon motion that Court remanded the case to the Superior Court upon the same ground, and the only error claimed is that the case was one within the clause in question.

POINTS.

I understand Putnam & Earle to claim that the case is removable on two grounds. I, as to the general account, and II as to the note for $5,000, and I shall consider these questions separately.

I.

As to the general account.

Upon the complaint and bill of particulars there is but one controversy or claim. The plaintiff alleges two facts, that there is such a partnership as Putnam, Earle & Co., and that it is indebted to him for money had and received, etc., for a balance of account. The defendants have filed the general issue which puts both allegations upon trial.

So far there is only one controversy, between Ingraham on one side, and Putnam, Earle & Morgan on the other, and on that state of facts alone the case is clearly not removable.

1st. The defendants, Putnam & Earle, however, besides the general denial, file a special answer making allegations which they say raise a separable controversy, so as to bring the case within the second clause of the statute; they are in substance, that the items in the account which accrued prior to

January 2d, 1884, were not proper charges against them jointly with Morgan, but were against another firm composed of Putnam & Earle alone without Morgan.

They say:

"That as to none of the items in the year 1883, have they made any contract, promise, or undertaking, jointly with said Morgan, and that they are not under any joint liability with him, or as partners with him, in respect to said items."

This is in substance saying that, as to a part of the items, Putnam & Earle were not partners with Morgan, and presents the same question as if they alleged that they were not partners with him in regard to any of the items.

But this court has held in Hyde *vs.* Ruble, 104 U. S., 407, that such an allegation does not constitute a separable controversy; it only presents an *issue* in the case. The only controversy there, was whether such a partnership as was alleged existed, and the only difference between that case and this is, that there the partnership was claimed not to exist for the whole time of the account, and here in one answer it is denied for the whole time, and in another for a part. I can see no difference in the principle.

It seems very clear that no such separate and distinct claims are presented here as is required under the decision in the case of Barney *vs.* Latham, to bring a case within the terms of this clause of the statute.

Besides this, this defense does not present any material controversy at all, for it does not allege that upon those items accruing before January 2, 1884, there was anything due, or claimed by Ingraham to be due from Putnam & Earle to him. So far as appears, if an account had been stated at that date, the balance might have been found to be against Ingraham, instead of Putnam & Earle, and Ingraham makes no claim in this case against the firm of Putnam & Earle.

I submit also, that one or more non-resident defendants cannot, by mere allegations in an answer, bring a case within this second clause if it does not appear to be such a controversy by the plaintiff's complaint, especially where such allegations are denied by the plaintiff.

The statute requires that there must *be* two distinct and separate causes of action,—one against the non-resident alone, and the other against him with the resident. It is not enough, when no such claim is made by the plaintiff, that the defendant should come in and make a claim that there is, or may be, such a separate controversy, which claim is denied by the defendant. How it might be if such a claim were made and admitted by the plaintiff it is not necessary to consider.

If such a construction of this clause should be adopted by this court, then in every case where a non-resident was made a defendant with a resident, the former could remove the cause simply by alleging that he was not jointly liable with the non-resident, the very question decided in Hyde *vs.* Ruble.

It will perhaps be claimed that Ingraham, by making a general denial of the allegations in his replication, instead of denying specially each allegation of the answer, admits the claim of Putnam & Earle to be true; and section 7 of the rules of the court is cited in the bill of exceptions, which says, "Denials must fairly meet the substance of the allegation denied," as if it was meant by this, that every separate allegation must be met by a separate denial of it.

The Practice Act, however, in Sec. 3, says: "The defendant, in his answer, shall specially deny such allegations of the complainant as he intends to controvert, admitting the truth of the other allegations, unless he intends in good faith to controvert *all* the allegations, in which case he may deny them generally as follows: "The defendant denies the truth of the matters contained in the plaintiff's declaration;" and

this is just the form which these defendants adopted in this case as their first defense.

No special provision is made as to the form of the replication; but it is apparent from analogy, that a general denial is as sufficient there as it would be in the case of an answer, and certainly it cannot be, as the defendants appear to claim, an admission of the truth of the matters denied!

Even if this claim of the defendants be true, and it is admitted that these items before January 2, 1884, are not due from the firm of Putnam, Earle & Co., the only result would be that the plaintiff Ingraham could not recover anything on them in this suit. He can only recover in a suit against this firm for debts due from this firm to him; whether certain items are not due at all, or are due from John Smith, or from Putnam and Earle jointly, raises no separate controversy. In either event it is a defense which can be made under the general issue, and this special answer only seems to be made for the sole purpose of this attempt at removal.

2. The principal claim of the plaintiff in error will be, I apprehend, that by the statutes of Connecticut, in any suit against several persons, judgment may be rendered against all, or against any number less than all, against whom a cause of action may be proved, and that although the Ingraham claim now may be against Putnam, Earle, and Morgan, all three, yet he *may* recover in this suit a judgment against Putnam and Earle alone.

It is admitted that such is the law, both in Connecticut and almost everywhere else; but I deny that the mere possibility of a judgment against the non-residents alone, brings the case within the clause in question.

I can hardly suppose it will be claimed that in *every suit* against a resident and non-resident, the non-resident may remove the suit merely because the rules of pleading will *permit* a judgment to be rendered against him alone, where no such judgment is claimed by the plaintiff.

But it would be equally absurd to claim that in every such case the non-resident could remove the suit merely by filing an answer claiming that the whole or a part of the amount claimed was due from him alone, or by denying that there was anything due from any of the defendants, but that if anything was due it was from the non-resident alone, and not jointly with the resident. In this case however it is not even claimed that there is anything *due* from Putnam and Earle to Ingraham, but only that certain items *originally accrued* between him and them.

To my knowledge, this precise question has not arisen in this court, nor on the circuit. The nearest approach to it there, is in a class of cases of which Boyd *vs.* Gill, 19 Federal Reporter, p. 148, is a specimen. There Judge Wallace says:

"It does not necessarily follow that a controversy is wholly between a plaintiff and each one of several defendants, and can be fully determined as between them, merely because such a controversy *might* have been presented if the plaintiff had elected to present it in that form. The controversy in a suit is the one which is *actually* presented, not the one which *might* have been. . . . The controversy is the claim in form and substance as it is presented for determination; and if a joint recovery against several defendants is claimed upon a cause of action which justifies a joint recovery, *the controversy is between the plaintiff and all the defendants, against whom the claim is asserted.*"

This seems to me to be good sense, as well as good law, and I will submit this question on the views laid down in that case and in the cases to which he refers, although in those cases upon the allegations in the complaint, judgments could be rendered against the non-residents alone. I wish to add here that under the rules of this court, although I represent the defendant in error, yet as he is the plaintiff in the State court, and desires to have the case disposed of, I am obliged to move to have the case advanced and submitted, and therefore have to file my brief first, without really knowing what the plaintiff in error will claim. I may not, therefore, answer his arguments, as I do not know exactly what they may be.